

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

IN THE MATTER OF:

Tracey Williams

Bankruptcy Case No. 08-81559

SS#: xxx-xx-0922

Mailing Address:

2116 Traceway South
Sanford, NC 27332

Debtor.

Tracey Williams

Plaintiff.

v.

AP No. 09-9029

Washington Boulevard Motors, Inc.,

"Detective Evans", and

Alisina Nezam

Defendants.

ORDER REGARDING

**JOINT MOTION BETWEEN PLAINTIFF AND
DEFENDANTS WASHINGTON BOULEVARD MOTORS, INC. AND ALISINA NEZAM
TO APPROVE SETTLEMENT OF
COMPLAINT FOR SANCTIONS FOR CONTINUING,
WILFUL VIOLATIONS OF THE AUTOMATIC STAY**

WITH the consent of Plaintiff, Tracey Williams, by and through Edward C. Boltz , her undersigned counsel, the Defendants, Washington Boulevard Motors, Inc. And Alisina Nezam, and the Richard M. Hutson, II, the Chapter 13 Trustee in the underlying bankruptcy case, and respectfully move the Court to approve the following Settlement of Complaint for Sanctions for Continuing, Wilful Violations of the Automatic Stay between said parties. In support of this Motion, the parties respectfully show the Court as follows:

1. The above-referenced Plaintiff filed a Voluntary Petition under Chapter 13 of the United States Bankruptcy Code on October 17, 2008, and Richard M. Hutson, II, is the duly appointed and acting Chapter 13 Trustee.
2. The Plaintiff filed the original Complaint in this case on June 26, 2009, and filed an Amended Complaint on August 6, 2009 (the "Complaint").

3. That Defendants Washington Boulevard Motors, Inc. and Alisina Nezam filed an Answer on August 27, 2009, generally denying the allegations of the Complaint and asserting certain defenses.
4. That in the interests of avoiding the costs and risks of further litigation the parties to this Joint Motion have agreed to settle this action on the following terms, without any admission of liability or wrong-doing:
 - a. This action shall be dismissed with prejudice by the Court as to Washington Boulevard Motors, Inc. and Alisina Nezam.
 - b. Washington Boulevard Motors, Inc. and/or Alisina Nezam will pay to the Plaintiff, upon entry of an Order approving the settlement, the sum of \$2,500.00 for her alleged personal injuries she contends she suffered as a result of the actions alleged in the Complaint and Amended Complaint;
 - c. The claim in the Plaintiff's Chapter 13 case filed by Citifinancial Auto, Ltd. , and assigned to Washington Boulevard Motors, Inc., in the amount of \$16,260.59, shall be disallowed in its entirety.
 - d. Washington Boulevard Motors, Inc. shall, within fourteen (14) days of the entry of an Order granting this Motion, notify the North Carolina Division of Motor Vehicles of the cancellation the lien held against the Plaintiff's 2002 Mercedes Benz ML500, vehicle identification number 4JGAB75E72A306312.
 - e. Alisina Nezam shall provide reasonable co-operation with the Plaintiff's continuing lawsuit against Nick Gables, a.k.a. "Detective Evans, including signing a sworn Affidavit detailing the employment of Nick Gables by Washington Boulevard Motors, Inc.
 - f. The parties further specifically agree that payment to the Plaintiff of \$2,500.00, the disallowance of the \$16,260.59 claim, and the cancellation of the lien shall constitute compensation for the alleged personal injuries the Plaintiff contends she suffered as a result of the alleged actions by Washington Boulevard Motors, Inc. and/or Alisina Nezam. As such, this compensation:
 - i. Shall be fully exempt pursuant to N.C.G.S. § 1C-1601(a)(8);
 - ii. Such compensation shall not inure to the benefit of the Plaintiff's Chapter 13 bankruptcy estate, allowing the Plaintiff to modify her Chapter 13 plan to reduce payments as otherwise allowed by 11 U.S.C. § 1329.
 - g. For tax purposes, the cash portion of this settlement shall be deemed to constitute compensation for damage to property and the disallowance of the claim held by Washington Boulevard Motors, Inc. shall constitute a discharge of indebtedness

pursuant to 26 U.S.C. § 108 (a)(1)(A). Neither Washington Boulevard Motors, Inc. and/or Alisina Nezam shall be required to, and they hereby agree not to, send the Plaintiff a 1099 Misc. Income tax form.

- h. Washington Boulevard Motors, Inc. and Alisina Nezam shall bear their own costs in this matter.
- i. The Plaintiff shall bear her own costs in this matter, as follows:
 - i. The Plaintiff shall pay to her attorney one-third (33 1/3%) of her total recovery, in the amount of \$18,760.59, specifically \$6,253.53.
 - ii. The payment to Plaintiff's attorney is in compensation for both the actual time and expenses incurred, the risk of litigation assumed by the Plaintiff's attorney at the commencement of this action, and the continuing risk, as described below, of non-payment of the fee.
 - iii. The Plaintiff shall use the \$2,500.00 cash paid by Washington Boulevard Motors, Inc. and Nezam, to make repairs to the 2002 Mercedes-Benz ML 500.
 - iv. The attorneys' fees in the amount of \$6,253.53 shall be paid through the Plaintiff's Chapter 13 plan.
 - v. The Plaintiff's attorney is authorized to record a lien with the North Carolina Division of Motor Vehicles against the Plaintiff's 2002 Mercedes Benz ML500, vehicle identification number 4JGAB75E72A306312, to secure his fee and the automatic stay of 11 U.S.C. § 362 is modified to allow such recordation.
- j. This settlement shall not constitute compensation as to any actions taken by Nick Gables, a.k.a. "Detective Evans", or any other party, and shall not be credited against any recovery from her.
- k. The Plaintiff shall have thirty (30) days from the entry of an Order granting this Motion to amend her Complaint to correct the name of the Plaintiff "Detective Evans" to Nick Gables and add as an additional Defendant Interstate Recovery, Inc. in the Amended Complaint.

Dated: December 21, 2009

Orcutt, Bledsoe and Boltz, P.C.
/s Edward C. Boltz
Edward Boltz
Attorney for the Plaintiff
North Carolina State Bar No.: 23003
1738-D Hillandale Rd.
Durham NC 27705

Dated: December 4, 2009

/s Tracey Williams
Tracey Williams
Plaintiff

Dated: December 21, 2009

/s Richard M. Hutson, II
Richard M. Hutson, II
Chapter 13 Trustee
Post Office Box 3613
Durham NC 27702

Dated: December 21, 2009

Nicholls & Crampton, P.A.
/s Stephani W. Humrickhouse
Stephani W. Humrickhouse
Attorney for the Defendants, Washington
Boulevard Motors, Inc. and Alisina Nezam
North Carolina State Bar No.: 9528
Post Office Box 18237
Raleigh NC 27619

Dated: December 4, 2009

/s Alisina Nezam
Alisina Nezam, for Washington Boulevard
Motors, Inc.

Dated: December 4, 2009

/s Alisina Nezam
Alisina Nezam